No 13695

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JOHN FOSTER DULLES, Secretary of State of the United States of America,

Appellant,

vs.

LEE GNAN LUNG, by his next friend, LEE KUT,

Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON NORTHERN DIVISION

HONORABLE WILLIAM J. LINDBERG, *Judge*

REPLY BRIEF OF APPELLANT

J. CHARLES DENNIS
United States Attorney

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JURISDICTION

Counsel has moved to dismiss the appeal or in the alternative to strike appellant's brief because we failed to cite the statute conferring jurisdiction on this court and erroneously states no page reference

of the record is made. This latter statement, is of course incorrect and misleading.

It was an inadvertance that we neglected in our jurisdictional statement to cite Title 28 Section 1291 as conferring jurisdiction on this court, which hardly calls for the penalty exacted by counsel.

ARGUMENT IN REPLY TO APPELLEE

To begin with, the jurisdiction of the district court is predicated on a person being *"denied * * * a right or privilege * * *."*

Here, there is neither pleading nor proof of such. But counsel claims and argues, without citation of supporting authority, that *delay* on the part of the American Consul in processing appellee's application for a passport is tantamount to a denial. This position is untenable for several reasons, chief among which is the fact that the consul had not completed his investigation of appellee's application for a *passport* when this action was started in February 1952, and the further fact that in paragraph VIII of the complaint (R. 6-7) it is by appellee alleged, inter alia, "On October 11, 1951 (the Consul) wrote a letter, stating that the plaintiff had been interviewed at the office of the American Consul but *had not pre-*

sented sufficient evidence to enable the Consul to issue him a final document and that it was indefinite when any travel document would be issued because there were approximately 1800 cases ahead of plaintiff * * *." (R. 6)

In this same paragraph, appellee attempts to substitute his interested conclusion as to the sufficiency of the evidence before the Consul for that of the Consul, whose duty it is to make the determination, by stating "but there is in truth and in fact no good reason for such delay because the plaintiff has submitted adequate and competent evidence of his citizenship and right to come to the United States * * *." This, of course, is for the determination of the Consul and not the applicant.

The pleadings do not attempt in any manner to set forth what this so-called adequate and competent evidence was, unless it can be gathered from the further allegations in paragraph VIII, wherein it is alleged that appellee's right to a travel document could be determined on a basis of affidavits submitted. (R. 6)

This argumentative allegation further states that appellee "is subject to examination by the United States Immigration authorities at a port of entry in the United States" and for that reason he should

have been given a passport without further ado.

The difficulty with this is that it is a matter for the exclusive determination of the Consul in the foreign country, and not for the courts under existing law, and the remedy, if any is needed, must be sought through Congressional enactment.

A passport is issued only to American citizens, and until an applicant in a foreign country for a passport to come to the United States is able to satisfy the Consul that he is in fact an American citizen the passport will not issue.

By Section 903, Title 8, U.S. Code, *until such applicant is denied a passport*, he is not authorized to invoke the jurisdiction of the United States District Court. The statute in this respect certainly is not ambiguous, it reads:

> "If any person who claims a right or privilege as a national of the United States *is denied such right or privilege* * * * (he) may institute an action against the head of such department in the United States Court for the district in which such person claims a permanent residence for a judgment declaring him to be a national of the United States."

From this, it will be seen that *there must be a denial* of passport before suit is instituted, or the District Court is authorized to entertain such a suit.

The complaint *negatives a denial,* but counsel argues that long delay is tantamount to a denial.

Without some valid excuse for a long continued delay in processing the application for a passport there may possibly be instances where such delay might be treated as a denial, but here, appellee himself, through his father Lee Kut as his next friend, furnishes at least two of the reasons for the delay in this case by the allegations contained in paragraph VIII of his complaint wherein it is stated that the consul had advised him that appellee had appeared before him, "*but had not presented sufficient evidence*" and "*there were approximately 1800 cases ahead of plaintiff.*" (R. 6)

The Consul naturally considers these applications in the order of filing and in the very nature of things it takes much time to examine as many as 1800 applications, so, that in due course there will be a conclusion reached by the Consul in the consideration of appellee's application, but it is a condition precedent to suit that a passport first be denied.

By commencing a suit in the District Court appellee is attempting to by-pass the 1800 applicants ahead of him and have a judicial determination made of his case without awaiting the administrative decision on his application.

His whole complaint is that of inaction upon the part of the American Consul at Hong Kong.

Appellee in his brief, asserts on the authority of *Bauer v. Acheson*, 161 F. (2d) 397, that such inaction is a denial of the right or privilege guaranteed by the Constitution.

> Persons outside the United States have no constitutional right to test claims to United States citizenship in the courts.

It has long been recognized that even when the Constitution requires due process of law, it does not necessarily contemplate a judicial hearing. This concept has been dramatically proclaimed in a host of decisions under the Immigration laws, which have confirmed the authority of Congress to confide determinations in exclusion and deportation cases to Immigration officers, empowered to act without judicial intervention.

The Chinese Exclusion Case, 130 U. S. 581 (1898);

Ekiu v. United States, 142 U.S. 651 (1892);

Fong Yue Ting v. United States, 149 U.S. 698 (1893);

Lem Moon Sing v. United States, 158 U.S. 538 (1895);

The Japanese Immigrant Case, 189 U.S. 86 (1903).

It is true that a claimant to United States citizenship who is within the United States may invoke judicial aid in contesting an order designating him to be an alien.

Ng Fung Ho v. White, 259 U.S. 276 (1922).

There is no constitutional requirement which offers access to a judicial forum to a person residing abroad who claims to be a citizen of the United States. Federal law does not preclude the maintenance of a suit in the courts of the United States by a non-resident, if such litigation is otherwise permitted. However, it is doubtful whether such non-resident can demand full procedural benefits under the Constitution of the United States. Cf. *Johnson v. Eisentrager*, 339 U.S. 767 (1950). The courts always have held that a claimant to United States citizenship who seeks to enter this country can not assert any constitutional right to a judicial hearing when Congress has declared that his rights and status must be evaluated by administrative officers. The leading case is *United States v. Ju Toy*, 198 U.S. 253 (1905) which ruled that immigration officers had acted within the scope of their authority in barring from the United States a person whose title to United States citizenship they had found insubstantial. The court held that Congress can entrust the determination of such

citizenship status to an executive officer, without any opportunity for de novo examination in the courts. Justice Holmes, speaking for the court, stated, 198 U.S. at 263:

> "The petitioner, although physically within our boundaries, is to be regarded as if he had been stopped at the limit of our jurisdiction and kept there while his right to enter was under debate. If, for the purpose of argument, we assume that the Fifth Amendment applies to him and that to deny entrance to a citizen is to deprive him of liberty, we nevertheless are of opinion that with regard to him due process of law does not require a judicial trial. That is the result of the cases which we have cited and the almost necessary result of the power of Congress to pass exclusion laws. That the decision may be entrusted to an executive officer and that his decision is due process of law was affirmed and explained in *Nishimura Ekiu v. United States*, 142 U.S. 651, 660, and in *Fong Yue Ting v. United States*, 149 U.S. 698, 713, before the the authorities to which we already have referred. It is unnecessary to repeat the often quoted remarks of Mr. Justice Curtis, speaking for the whole court in *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 280, to show that the requirement of a judicial trial does not prevail in every case."

In *Tang Tun v. Edsell*, 223 U.S. 673 (1912) Justice Holmes similarly observed:

> "The acts . . . make the decision of the appropriate immigration officer final unless reversed on appeal to the Secretary of Commerce and Labor. And if it does not affirmatively appear that the executive officers have acted in some un-

> lawful or improper way and abused their discretion, their finding upon the question of citizenship may be deemed to be conclusive and is not subject to review by the court."

And in *Ng Fung Ho v. White*, 259 U.S. 276, 282 (1922), which supported the right to a judicial hearing for a citizenship claimant *within* the United States, Justice Brandies commented:

> "If at the time of arrest they had been in legal contemplation without the borders of the United States, seeking entry, *the mere fact that they claimed to be citizens would not have entitled them under the Constitution to a judicial hearing.*" (Italics ours)

See also *United States v. Sing Tuck*, 194 U.S. 161 (1904); *Chin Yow v. United States*, 208 U.S. 8 (1908); *Medeiros v. Watkins*, 160 F. (2d) 897 (C.A. 2, 1948). In the latter case all the authorities on this point are collated.

> Congress may define, modify, or withhold the right to bring suit and determine under what circumstances suit shall be instituted.

The laws of the United States recognize no inherent right to maintain any form of civil action in the federal courts. The Constitution directs that the judicial power shall be lodged in the Supreme Court "and in such inferior courts as the Congress may from time to time ordain and establish," Art. III, section 1. The only apparent exception precludes suspension

of the right of habeas corpus, except in cases of rebellion and invasion, Art. III, sec. 9. While the Constitution specifies that the judicial power shall extend to cases and controversies (Art. III, section 2), the mode in which such controversies can be heard and the form of relief, if any, are matters to be determined solely by Congress. Congress can grant or withhold a remedy and can withdraw such remedy after it has been established. Such determination regarding the jurisdiction of the federal courts (other than the Supreme Court) are peculiarly within the competence of Congress.

These doctrines are elucidated by a long line of adjudications originating in the early days of the Republic. The court is referred to only two decisions of the United States Supreme Court in which the controlling principles are summarized and many of the cases are collected. Thus, in *Kline v. Burke*, 260 U.S. 226, 233-4 (1922), the court stated:

> "The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it creates. Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be

> not extended beyond the boundaries fixed by the Constitution * * *. The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it * * * And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part; and if withdrawn without a savings clause all pending cases though cognizable when commenced must fall * * * A right which thus comes into existence only by virtue of an act of Congress, and which may be withdrawn by an act of Congress after its exercise has begun, can not well be described as a constitutional right."

And in *Hallowell v. Commons*, 239 U.S. 506 (1916), the Supreme Court upheld a statute taking from the federal courts jurisdiction to hear certain cases affecting Indians and conferring upon the Secretary of Interior exclusive and final authority to adjudicate such claims. The Court's opinion, delivered by Justice Holmes, observed, 239 U.S. at 508-9:

> "It is unnecessary to consider whether there was jurisdiction when the suit was begun. By the act of June 25, 1910, c. 431, 36 Stat. 855, it was provided that in a case like this of the death of the allottee intestate during the trust period the Secretary of the Interior should ascertain the legal heirs of the decedent and his decision should be final and conclusive; with considerable discretion as to details. This act restored to the Secretary the power that had been taken from him by acts of 1894 and February 5, 1901, c. 217, 31 Stat. 760. *McKay v. Kalyton*, 204 U.S. 458, 468. It made his jurisdiction exclusive in terms, it made no exception for pending litigation, but pur-

ported to be universal and so to take away the jurisdiction that for a time had been conferred upon the courts of the United States. The appellee contends for a different construction on the strength of Rev. Stats. § 13, that the repeal of any statute shall not extinguish any liability incurred under it, *Hertz v. Woodman*, 218 U.S. 205, 216, and refers to the decisions upon the statutes concerning suits upon certain bonds given to the United States. *United States Fidelity and Guaranty Co. v. United States*, 209 U.S. 306. But apart from a question that we have passed, whether the plaintiff even attempted to rely upon the statutes giving jurisdiction to the courts in allotment cases, the reference of the matter to the Secretary, unlike the changes with regard to suits upon bonds, takes away no substantive right but simply changes the tribunal that is to hear the case. In doing so it evinces a change of policy, and an opinion that the rights of the Indians can be better preserved by the quasi-paternal supervision of the general head of Indian affairs. The consideration applies with the same force to all cases and was embodied in a statute that no doubt was intended to apply to all, so far as construction is concerned.

"There is equally little doubt as to the power of Congress to pass the act so construed. We presume that no one would question it if the suit had not been begun. It is a strong proposition that bringing this bill intensified, strengthened or enlarged the plaintiff's rights * * * The difficulty in applying such a proposition to the control of Congress over the jurisdiction of courts of its own creation is especially obvious."

These principles obviously govern suits for declaratory judgment. Prior to 1934 it was uniformly

held that the federal courts were powerless to entertain actions seeking declaratory judgments.

Piedmont v. United States, 280 U.S. 469 (1930). The federal courts were clothed with jurisdiction to render declaratory decrees for the first time by the Declaratory Judgment Act of June 14, 1934, 48 Stat. 955. In section 503 of the Nationality Act of 1940 Congress did sanction independent judicial inquiry when an asserted right to United States citizenship was denied on the ground that such person was not a national of the United States but the very novelty of this remedy originating in 1940 would hardly support any assumption of an inherent right to judicial examination. The entire course of adjudication by the Supreme Court certainly rejects such an assumption and compels the conclusion that an unsuccessful citizenship claimant who is outside the United States is entitled only to such redress as Congress may afford him. Congress has, in fact, now withdrawn the remedy under the 1940 Act to persons so circumstanced as appellee and has provided under section 360 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1503) that declaratory judgment actions are not available to citizenship claimants who are outside the United States but they must pursue their administrative remedy by applying for a certificate of identity for travel to the United States

whereupon a ruling on such person's citizenship status will be made by immigration officers in the United States whose determination may be reviewed in habeas corpus proceedings.

> Denial of "a right or privilege on the ground that 'he is not a national'" is a prerequisite to jurisdiction of the District Court.

Since the court has no jurisdiction except as prescribed by Congress and Congress in section 503 of the Nationality Act of 1940 (8 U.S.C. 903) unmistakably provided that only those who are denied a claimed right or privilege upon the ground that they are not a national of the United States may institute an action. The failure of the complaint to clearly specify and allege such jurisdictional prerequisite is fatal. This is so even where it appears by allegation in the complaint that no action has been taken after repeated requests for travel documents. Two District Courts in this Circuit have so held.

> *Lee Hung v. Acheson*, 103 F. Supp. 35;
> *Lee Hong v. Acheson*, 110 F. Supp. 60.

District Judge Foley for the District of Nevada on January 28, 1952 in considering a motion to dismiss in *Lee Hung* (supra) held as follows:

> "As a jurisdictional prerequisite it must appear from a complaint under 8 U.S.C.A. 903 that a plaintiff who claimed a right or privilege as a

national of the United States was denied such right or privilege by any department or agency, or executive officer thereof, upon the ground that he was not a national of the United States. No such denial appears in any of the complaints here."

"8(a), Federal Rules of Civil Procedure, 28 U.S.C.A. provides:

> 'Claims for Relief. A pleading which sets forth a pleading for relief, whether an original claim, counter-claim, cross-claim, or third party claim shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, * * *'

"Rule 12(h)(2), Federal Rules of Civil Procedure provides:

> 'That whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action * * *'

"Each of the complaints of the said plaintiffs should be dismissed for the reason that in none of the said complaints is there any compliance with rule 8(a)(1), Federal Rules of Civil Procedure, there being no allegation in any of said complaints that the plaintiff therein claimed and was denied a right and privilege as a national of the United States upon the ground that he is not a national of the United States."

In the case considered by Judge Foley, paragraph VII of the complaint quoted in the decision, alleges a re-

fusal to grant an application for travel documents, it not appearing by allegation how such refusal was accomplished. That allegation read as follows:

> "That for over six years last past the said plaintiff has presented various and sundry applications to the American Consul at Canton, China, and in the British Crown Colony at Hongkong for permission to enter the United States as a citizen thereof and/or for the purpose of having his claim to United States citizenship passed upon and adjudicated by the Immigration and Naturalization Service of the United States and, despite said repeated applications, the said plaintiff has been unable to secure a visa, permit, permission to travel to and enter the United States from said American Consul; and said American Consul has refused to grant said application for visa or permit to travel to the United States for reasons that are unknown to the plaintiff herein."

Here, too, the complaint alleged that inaction on the part of the American Consul in Hongkong amounted to a refusal by the said Consul to issue travel documents. In the instant case no direct refusal is claimed. On the other hand, the correspondence indicates that the State Department is still considering the application and has not indicated a disposition to deny or affirm the appellee's application for documentation.

For the court in this case to construe the failure of the American Consul at Hongkong to act, within

a period of time which the appellee deems reasonable, a denial of his application would be merely an assumption based on an argumentative allegation in the complaint which does not in any respect conform to the requirements for a denial set out in the statute. This would be in contradiction of the well settled principle that there is a presumption against the jurisdiction of a federal court, unless the contrary affirmatively appears in the record and any doubt should be resolved against jurisdiction.

Mansfield C. & L. M. Railway Company v. Swan, 111 U.S. 379;

In re Smith v. United States, 94 U.S. 455;

Baltimore & Ohio Railway Co. v. Thompson, 8 F. R. D. 96.

A positive allegation of the facts upon which federal jurisdiction is based must be alleged and jurisdiction can not be inferred argumentatively from the pleadings.

Hanford v. Davis, 163 U.S. 273.

The court, at page 280, said:

> "Essential facts averred must show, not by inference or argumentatively, but clearly and distinctly, that the suit is one the Circuit Court is entitled to take cognizance."

Appellee in his brief lays great stress upon cases where the courts have denied motions to dismiss and

sustained the jurisdiction of the court but in none of these cases has the action been attacked for failure to allege jurisdictional facts in conformance with the Congressional mandate.

Appellee stresses *Acheson v. Yee King Gee*, 9th Circuit, 184 F .(2d) 382. The facts in the Yee King Gee case have no analogy to the situation presented here. An examination of the facts in that case discloses that Yee King Gee was issued a certificate of identity by the American Consul at Hongkong and proceeded to the United States and such facts were pleaded. The question raised there was one of venue. Improper venue in the instant case is not claimed. It is recognized that actions brought under section 503 do not come within the general venue provisions of the Federal Statutes but come within the exception, "except as otherwise provided by law."

The reported decisions cited by appellee are all cases wherein there was a specific denial of a right or privilege and a question of lack of such an allegation in the pleadings is not raised. As has been previously pointed out in the case of *Yee King Gee v. Acheson*, supra, a certificate of identity was issued pursuant to section 503 and the question was not raised in that case. In *Podeau v. Acheson*, 170 F. (2d) 721, the applicant was denied a passport by the

American Consul in Paris. In *Attorney General v. Ricketts*, 9th Circuit, 165 F. (2d) 193, and in *Bauer v. Clark*, 7th Circuit, 161 F. (2d) 397, a claim of citizenship was denied by the Attorney General by the institution of deportation proceedings. In *Brassard v. Biddle*, 148 F. (2d) 134, the Attorney General sought by institution of an action for cancellation to deprive the plaintiff of United States citizenship.

It is hardly correct to say that in the instant case all of the witnesses testified affirmatively "that the appellee is the person he claims to be." The most that can be said as to the testimony is that *someone told them* that appellee is the son of Lee Kut. This is pure unadulterated hearsay. Counsel cites in support of his contention that "hearsay" is competent evidence in this type of case *United States v. Wong Gong*, 70 F. (2d) 107, from which he quotes. That decision merely held that "hearsay" as to the time and place of birth is competent evidence. *No question of identity* was either presented or determined.

Date and place of birth and identity are two entirely different things. The one may be competent to show birth at a certain time and at a certain place, but it is quite another thing to show that the person whose birth is so proven is the identical person who claims to be the "blood" offspring of another. And

it is our insistance that it is "hearsay" for even the father who was not present at the birth relied entirely upon what someone else told him as to the birth of an alleged son, to identify appelle as his "blood" son. *Lee Sim v. United States*, 218 F. 432.

The statute § 903 T. 18 U.S.C. further provides:

> "*If such person is outside the United States and shall have instituted such action in court*, he may, *upon submission of a sworn application* showing that the claim of nationality presented in such action is made in good faith and has a substantial basis, *obtain* from a diplomatic or consular officer of the United States in the foreign country in which he is residing *a certificate of identity stating that his nationality status is pending before the court; and may be admitted to the United States with* such certificate *upon condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States.*"
> (Italics supplied)

After, and *only after a denial* by the Consul of a *passport*, is a person in a foreign country authorized to invoke the aid of a United States District Court by the commencement of an action for declaratory judgment as to his nationality status, and then and then only must he make application to the consul in the foreign country for a "certificate of identity; *stating that his nationality status is pending before the court.*" This application entitles him to such certificate of identity, which, in the words of the statute

shall entitle him to be "admitted to the United States with such certificate *upon condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States.*"

Appellee elected *not to wait until the Consul had denied his application for a passport*, before commencing a suit for declaratory judgment, attempting to invoke the court's jurisdiction on the basis of *an expected eventual denial* to him of a passport; well knowing, according to his own pleading, that there were 1800 applications pending before the consul ahead of his, and by this method successfully sought to have a judicial determination of his nationality status ahead of those 1800 persons whose applications were being processed in the regular course and in the order of their filing with the American Consul, even though not personally present. The District Court apparently believed that the delay in passing upon the "passport" application was unreasonable and was tantamount to a denial of a "passport", notwithstanding that appellee's own pleading clearly negatived such an assumption and was of itself explanatory of the apparent delay.

The decree is therefore void for lack of jurisdiction and the District Court clearly erred in denying

appellant's motion to dismiss, and entering the decree, which should be set aside.

Counsel cites *Kawaguchi v. Acheson*, 184 F. (2d) 310 to sustain his contention that delay in acting is equivalent to denial.

That was not the issue litigated in that case. The appeal was from an order dismissing the action because plaintiff was not present and the refusal of the District Court to grant a continuance at the request of counsel representing him. True there is some language used in discussing the nature of the case, but that language is dictum. In any event, the court was there dealing with a "certificate of identity" after the institution of the suit which is provided for to entitle the person in the foreign country to come to the United States under bond to be present at the trial. There never has been a trial of that case in this district, as since the coming down of the mandate to the District Court, a stipulation for dismissal was entered (Cause No. 2068) January 30, 1953, and the plaintiff commenced a new action in the District Court for the district of Colorado.

Counsel still persists in arguing that a "passport" and "certificate of identity" are similar. They are not the same at all. There must be a denial of the former on appeal to the Secretary of State, who,

if he denies the appeal, *must state his reasons in writing*, then an action commenced and an application filed with the Consul in the foreign country for a "certificate of identity" to enable a plaintiff to travel to the United States under bond to prosecute his action.

This "certificate of identity" *must be issued* after and only after such person has exhausted his administrative remedy as above set out, to give the District Court jurisdiction.

There is an entire lack of evidence in this case that any of those jurisdictional steps were taken by appellee and therefore the District Court never did acquire jurisdiction.

Our reply to appellee's argument at page 15 of his brief on the question of the order to show cause why a travel document should not be issued simply is that an appeal from the final judgment brings up for review all interlocutory orders.

Counsel says that the court's ruling in refusing to vacate its order directed to the Secretary of State to show cause why he should not issue a travel document has not affected the ultimate result. We, of course, contend that it has, because had appellee not waived his right to be present, the court's order to show cause would still be effective if he had jurisdic-

tion to enter it and it would seem that we are entitled to a ruling from this court on the question of the District Court's power to issue the order he has refused to vacate on motion therefor.

Counsel argues that there was no motion for a blood grouping test. That is not true. See record, page 87.

To contend that Lee Kut is not a party to this action and therefore not amenable to an order for blood grouping test seems strange in view of the fact that it was he who "verified" the complaint as appellee's next friend (R. 8) and is therefore a party to this action.

CONCLUSION

Whether a formal motion to dismiss was ever filed or not is wholly immaterial because the question of jurisdiction of the District Court may be raised at any stage of the proceedings and even in this court on appeal for the first time. If the District Court did not have jurisdiction its decree is void.

It hardly needs citation of authority to state the proposition that jurisdiction cannot be conferred by consent of the parties.

Because of the importance of the matter and because of the large number of similar cases pending in this district, and the two districts in California as so clearly pointed out in the decision of Judge Goodman in the case of *Ly Shew, etc. v. Acheson*, 110 F. Supp. 50, cited at p. 43 of our opening brief, we earnestly urge an early decision.

Respectfully submitted,

J. CHARLES DENNIS
United States Attorney

JOHN E. BELCHER
Assistant United States Attorney